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No. 76

In the Supreme Court of the United States

OCTOBER TERM, 1959

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION No. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners,*

vs.

THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation; *Respondent.*

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF FOR THE PETITIONERS

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OPINIONS BELOW

The oral opinion of the Superior Court for King County, Washington (R. 40-43), is unreported. The opinion of the Supreme Court of Washington (R. 60-67) is reported at 153 ~~Wash. Dec. 358,~~ 333 P.2d 924 (1959).

JURISDICTION

On February 10, 1959, the Supreme Court of Washington entered a judgment granting a writ of mandate compelling the Superior Court for King County, the

Honorable Lloyd Shorett, judge, to assume jurisdiction over a cause of action brought by respondent Yellow Cab Service, Inc., a Washington corporation, against petitioner Taxicab Drivers and Chauffeurs Local Union No. 465, and George Lancaster, its secretary-treasurer, seeking an injunction restraining Local 465 from picketing the premises of the corporation (R. 68-69). By order of Associate Justice William O. Douglas, the time for filing a petition for certiorari was extended to and including May 25, 1959 (R. 280).

Petitioners filed a petition for certiorari on May 25, 1959, and it was granted on June 29, 1959 (R. 280).

The jurisdiction of this court is based upon 28 U.S.C. Sec. 1257 (3), since rights, privileges and immunities specially set up and claimed under the statutes of the United States have been denied.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are those included in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187. Pertinent sections of the Act are as follows:

"Short Title and Declaration of Policy

* * * * * * * * * *

"Section 1(b) . . . It is the purpose and policy of this Act, in order to promote a full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their

relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

* * * * * * * * * * *

"Definitions

"Section 2. When used in this Act—

* * * * * * * * * * *

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States. . . .

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * * * * * * *

"Prevention of Unfair Labor Practices

"Section 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. . . ."

QUESTION PRESENTED

Does the National Labor Relations Board have jurisdiction over a strike, and peaceful picketing incident thereto, called by a labor union against a taxicab company which does not operate across state lines but which does an annual gross business of $1,429,914.02; which possesses franchises by which it is granted exclusive

rights to pick up passengers at certain railroad, airline and steamship terminals serving interstate carriers of passengers and baggage, and from the exercise of which franchises it receives annual revenue in excess of $156,062.40; and which is party to agreements with certain railroads by which it agrees to transfer passengers, traveling on "through" tickets, from the railroad terminals to the steamship docks, or vice-versa, and from the exercise of which agreements it receives an annual revenue of $1,436.55?

The court below answered this question in the negative.

STATEMENT OF THE CASE

1. The Seattle Yellow Cab Enterprise

a. Sale of taxicabs by the Yellow Cab Company, a partnership, to 118 purchasing corporations.

Prior to 1955 and 1956, the Yellow Cab Company, a partnership, operated a fleet of more than 120 taxicabs in the city of Seattle, Washington. The drivers and dispatchers employed by the company to operate and dispatch these taxicabs were members of petitioner Taxicab Drivers and Chauffeurs Local Union No. 465, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the company entered into collective bargaining contracts with this union providing wages, hours and conditions of employment for these drivers and dispatchers (R. 73, 76, 121).

In 1955 and 1956, however, the Yellow Cab Company

undertook to liquidate its assets by selling all of its taxicabs, individually, to taxicab drivers and others who were interested (R. 73-74). These sales were accomplished in the following manner:

The Yellow Cab Company first organized respondent Yellow Cab Service, Inc., a Washington corporation, and then sold to this corporation the service facilities and equipment, other than taxicabs, used by it in conducting a taxicab business, including the lease on the company garage and office facilities, the radio and telephone dispatching equipment, the shop and repair equipment, etc. (R. 73, 87-88).

The Company then solicited buyers for the taxicabs and when willing buyers were obtained, it required these buyers, or purchasers, to incorporate under the laws of the State of Washington and, further, to execute a certain "conditional sales contract" and also a certain "agreement" (R. 74, 79-80).

Pursuant to the terms of the "conditional sales contract" each purchasing corporation was sold a taxicab, a meter, a radio, a city permit, and four shares of Series 2 common stock in Yellow Cab Service, Inc. The contract provides that said property is to remain the absolute property of the Yellow Cab Company until the payment in full of the purchase price. Upon payment in full of the purchase price, title would then vest in the purchasing corporation subject, however, "to the terms and conditions of an agreement of even date herewith entered into between the parties hereto and Yellow Cab Service, Inc., a Washington corpora-

tion." The contract further provides that should the purchasing corporation breach any of the provisions of said agreement then the Yellow Cab Company can repossess the property conveyed (R. 9, 14-16, 23; Def. Ex. 2).

At the same time that each purchasing corporation executed the "conditional sales contract" described in the preceding paragraph, it also executed a certain "agreement" between the purchasing corporation on the one hand, and the Yellow Cab Company and Yellow Cab Service, Inc., on the other. This agreement provides that the Yellow Cab Company will retain the controlling shares in Yellow Cab Service, Inc., until all the purchasing corporations make all the payments required under all of the conditional sales contracts, at which time such shares will be assigned and transferred to Yellow Cab Service, Inc. This agreement further provides that the purchasing corporation agrees to "conform to, and be bound by, uniform rules and regulations" adopted by the board of directors of Yellow Cab Service, Inc., covering "among other things, but without limitations, rules and regulations relating to the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts, display of advertising, and maintenance and care of the operator's taxicab." It also provide that the purchasing corporation agrees to "conform to and be bound by the union contract provisions relating to the operation of taxicabs in the City of Seattle (R. 9-10, 17-22, 23; Def. Ex. 3).

Upon the execution of the "conditional sales con-

tract" and the "agreement," each purchasing corporation pledged its four shares of Series 2 common stock in Yellow Cab Service, Inc., to the Yellow Cab Company as security guaranteeing its performance of the terms and conditions of the "conditional sales contract." At the same time, and for the same purpose, the president of each purchasing corporation personally pledged a number of shares in his corporation to the Yellow Cab Company (R. 147-148, 154, 164; Def. Ex. 37).

During the years 1955 and 1956, the Yellow Cab Company, pursuant to the methods and contracts described above, sold some 120 taxicabs to some 118 purchasing corporations. At the time of the trial of this case none of the purchasing corporations had completed the payments required of it under the "conditional sales contract." In several instances the purchasing corporations could not make the payments required and the taxicabs were repossessed by the Yellow Cab Company and resold to other purchasing corporations (R. 73-74, 118-119, 148, 153-153).

b. The 118 purchasing corporations and Yellow Cab Service, Inc., conduct an integrated taxicab business.

Although the taxicabs formerly operated by the Yellow Cab Company are now being operated by some 118 purchasing corporations, these corporations, together with respondent Yellow Cab Service, Inc., continue to run an integrated taxicab service in the City of Seattle. Respondent Yellow Cab Service, Inc., is hereafter referred to as "the service corporation."

All taxicabs are painted the "Yellow" color pursuant to color rights granted to the purchasing corporations by the service corporation, and all carry advertising for the Standard Oil Company, the revenue from which is paid to the service corporation. The individual license or permit issued for each taxicab by the city of Seattle is issued jointly in the name of the purchasing corporation involved and the service corporation (R. 2, 7, 151).

All the taxicabs are centrally dispatched through the telephone and radio dispatching facilities operated by the service corporation in the garage and office which it leases at 902 Madison Street, Seattle. Generally, shifts begin and end at this garage, and the taxicabs are stored there when not in use (R. 87-88, 89, 91; Def. Ex. 13, 16, 20, 22).

The service corporation employs approximately 10 employees who operate the radio and telephone equipment used in dispatching the taxicabs. These dispatchers are members of petitioner Taxicab Drivers and Chauffeurs Local Union No. 465. The service corporation also employs "traffic men" who investigate accidents in which Yellow taxicabs are involved and who act as starters at the train depots and other places where Yellow taxicabs accumulate, and it employs office and clerical employees who do the bookkeeping, accounting and payroll work for the service corporation and the 118 purchasing corporations (R. 3, 7, 88-91, 102, 178-179).

The 120 taxicabs operated by the 118 purchasing corporations are usually driven by the presidents of the

respective purchasing corporations (hereafter called the "owners") and by employees specifically employed for that purpose (hereafter called the "employee-drivers"). Like the dispatchers the employee-drivers are members of Local 465 (R. 89, 177-178, 223).[1]

One of the employees of the service corporation is designated as "personnel manager." By action of the 118 purchasing corporations this "personnel manager" has been vested with authority to hire, fire and discipline the employee-drivers and to assign them to shifts on various taxicabs being operated by the various purchasing corporations, as well as assign these employees their days off, emergency leaves and vacations, and this authority has been extensively exercised by the "personnel manager." There is a considerable interchange of employees from taxicab to taxicab, which is done upon the assignment of the "personnel manager." Personnel records relating to all employee-drivers are maintained by the "personnel manager" (R. 102, 103-106, 170, 172-174, 177-178, 180-183; Def. Ex. 22, 42).

At the end of each shift the driver of each taxicab, whether he be an employee-driver or an owner, is required to turn the gross proceeds from that shift (known as the "turn") over to the office cashier working for the service corporation. These funds are then credited to the account of the purchasing corporation operating the particular cab. From these funds, the

[1] The testimony at the trial did not reveal the actual number of drivers working for the purchasing corporations but union records available to counsel for the petitioners indicate that, at the time of the strike in September, 1958, there were approximately 150 so employed.

service corporation deducts and pays (1) the wages due to the employee-drivers; (2) the payments due for Social Security, Workmen's Compensation, Unemployment Compensation and Health and Welfare coverages; (3) the automobile insurance premiums; (4) the payments due under the conditional sales contract; and (5) the service charges due to service corporation (known as the "nut"). The amount remaining is paid to the owners. Checks are issued to the owners and to the employee-drivers once a week. The pay checks issued to the employee-drivers list the service corporation as the payor (R. 88-90, 185, 190-192, 197, 219, 221; Def. Ex. 43, 44; Plt. Ex. 46).

There is one blanket policy of fire, theft and liability insurance covering all the taxicabs. The service corporation assists the purchasing corporations in negotiating for this insurance coverage and deducts the insurance premiums from the daily "turn" and pays said premiums directly to the insurance company. Owners who have too many accidents may have their cabs repossessed and resold to someone else (R. 2-3, 7, 90, 102-103; Def. Ex. 20).

The service corporation has a five-man board of directors, three of whom represent the Yellow Cab Company and two of whom represent the purchasing corporations. This board of directors meets regularly for the purpose of discussing matters of common interest, including the adoption of rules and regulations relating to "the dispatch and traffic control of cabs, the use of taxi stands, the servicing of transportation accounts,

display of advertising and the maintenance and care of the individual taxicabs" (R. 101-102; Def. Ex. 3, 17, 19, 20, 30).

The owners hold periodic meetings at which times they have adopted uniform rules and regulations for the conduct of their joint business, including the procedure to be followed by the "personnel manager" in the hiring, firing, disciplining and assigning of employee-drivers. The owners have also elected an owner's committee to act for the entire group of owners in the interval between owners' meetings. Two of the directors of the service corporation are members of this owners' committee. The president of service corporation has attended meetings of the owners' committee and given advice to that committee (R. 94, 97-98, 102-103, 185-186; Ex. 14, 16, 22).

Once a week the service corporation issues the "Yellow Cab Service, Inc., Bulletin" over the signature of the president of that corporation. This bulletin is published as a house organ and is distributed to all owners and employee-drivers. It contains the "operating procedure" and "rules and regulations" adopted at the owners' meetings, as well as announcements and directives from the service corporation (R. 92-94, 170-172; Def. Ex. 6 through 23).

All of the taxicabs operate largely in Seattle and King County. None of them operate across state lines (R. 114).

c. Revenue received by the Seattle Yellow Cab enterprise and franchises held by it.

During the year from July 1, 1957, through June 30, 1958, the 120 Yellow taxicabs operated by the 118 purchasing corporations earned a gross revenue of $1,429,914.02 (R. 108; Def. Ex. 24).

The service corporation owns franchise or concession agreements by which Yellow taxicabs are given exclusive rights to pick up passengers at the following railroad, air line and steamship terminals in Seattle, which terminals service interstate carriers of passengers and baggage: King Street Railroad Station; the Union Railroad Station; the King County Airport (also known as Boeing Field); the Seattle-Tacoma International Airport (also known as Bow Lake Field), and the Canadian Pacific Steamship Dock. In addition, Yellow taxicabs deliver passengers to these terminals, although such services are not pursuant to exclusive franchises or concessions (R. 12, 25, 80-84; Def. Ex. 5, 19).

Copies of the franchise or concession agreements between the service corporation and the airports and the Canadian Pacific Steamship Dock were not available (R. 81-83). However, a copy of the agreement between the service corporation and the Northern Pacific Railway and the Great Northern Railway, joint operators of the King Street Railroad Station, provides, in part, as follows:

"III.

"The Railroad Companies in order to care for

their incoming passengers desire to have at the King Street Station at all times when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers. The Railway Companies . . . do therefore grant to the Cab Company the exelusive right to occupy with taxicabs the space belonging to the Railway Companies situate adjacent to Third Avenue South alongside said King Street Station as shown enclosed in red lines on the map hereto attached and made a part of this agreement.

"IV.

"The Cab Company agrees to furnish and keep in attendance at said station during the hours when trains arrive a sufficient number of taxicabs in charge of sober and courteous drivers to serve incoming passengers, and agrees that passengers shall be transported to and from said station at reasonable rates, not to exceed those fixed by ordinance of the City of Seattle.

"V.

"The Cab Company agrees to remove from its service at that point any driver who for any reason is unsatisfactory to the Superintendent of the King Street Station upon being requested to do so by said Superintendent." (Def. Ex. 5; R. 243)

There exists a similar agreement with the Union Pacific Railroad covering the Union Railroad Station (R. 82).

No figures are available showing the amount of revenue earned by Yellow taxicabs from taking passengers to and from the railroad stations and the steamship dock (R. 112). Company records show, however, that

during the year from July 1, 1957, through June 30, 1958, Yellow taxicabs earned a gross revenue of $156,062.40 from picking up passengers at the King County Airport and the Seattle-Tacoma International Airport, pursuant to the franchise or concession agreements. During this same period these taxicabs earned an additional gross revenue of $46,818.00 from delivering passengers to these airports (R. 110-112; Def. Ex. 24).

The service corporation also holds agreements with the railroads operating out of the King Street Station and the Union Station by the terms of which Yellow taxicabs are exclusively utilized by said railroads to transfer through-passengers and baggage between said stations and the Canadian Pacific Steamship Dock, and vice-versa. During the year from July 1, 1957, through June 30, 1958, the Yellow taxicabs earned a gross revenue of $1,436.00 from furnishing such transfer services (R. 80-82, 84-87, 109-110; Def. Ex. 4, 24).

2. The Strike of Taxicab Drivers and Chauffeurs Local Union No. 465 Against the Seattle Yellow Cab Enterprise

At the time the taxicabs were sold to the purchasing corporations the Yellow Cab Company and petitioner Local 465 were parties to a collective bargaining agreement covering the drivers and dispatchers employed by the Company. In June, 1956, after the sale of the taxicabs, this contract expired. Subsequently, the purchasing corporations appointed a committee of owners, and this committee, together with representatives of the service corporation, negotiated a new collective bargaining agreement with Local 465 covering the

employee-drivers and dispatchers. Each purchasing corporation, and the service corporation, signed this agreement. By its terms, this agreement ran from August 1, 1956, to June 1, 1958, and from year to year thereafter unless amended or cancelled, and it provided that either party could open the contract by giving sixty days' notice to the other party. On March 26, 1958, the service corporation and the 118 purchasing corporations jointly terminated this agreement and notified Local 465 that they were willing to negotiate the provisions of a new agreement (R. 10, 23-24, 76-78, 128-129, 130, 165, 199-200, 223; Def. Ex. 1; Plt. Ex. 27).

During the ensuing months, representatives of Local 465 met and corresponded with representatives of the purchasing corporations and the service corporation in an attempt to arrive at mutually satisfactory terms for a new contract covering drivers and dispatchers. As one of the conditions for agreeing to a new contract, Local 465 requested that the purchasing corporations and the service corporation settle with the Local several pending grievances which arose during the life of the prior contract, including the failure of the service corporation to pay over to the trustees of a pension fund the sum of approximately $60,000.00 in pension premiums on employee-drivers, required by the terms of the prior contract. Another request of Local 465 was that it have some assurance that the service corporation, through its officers or employees, would participate in the settling of any grievances which arose during the life of the new contract. However, the negotiations between the parties

were unsuccessful and on September 16, 1958, the Local called a strike against the purchasing corporations and the service corporation and as an incident thereto caused two pickets to peacefully patrol the garage and office at 902 Madison Street, Seattle. The pickets carried signs reading

"YELLOW CABS
are
UNFAIR
to
TAXICAB DRIVERS LOCAL
UNION NO. 465."

On September 17 and again on September 18, 1958, the Federal Mediation and Conciliation Service requested the parties to meet with a representative of said service in an effort to resolve the differences between the parties so that the strike could be terminated. Two meetings were held but no agreement was reached and the strike and picketing continued (R. 11-12, 24, 132, 143-146, 158-163, 202-211, 212-217; Def. Ex. 3, 32, 33, 47 and 48).

3. Proceedings in the Trial Court

On September 23, 1958, the service corporation brought an action in the Superior Court for King County, Washington, against Local Union 465, George Lancaster, its secretary-treasurer, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, seeking a permament injunction restraining the Local and the International from picketing its place of business at 902

Madison Street. The complaint alleged that the service corporation was willing to sign a collective bargaining contract with the Local covering the dispatchers employed by said corporation; that no labor dispute existed between it and the Local, that the picketing was therefore unlawful, and that it was causing the service corporation to suffer irreparable damage (R. 1-5). Contemporaneously with the filing of this complaint, the service corporation also obtained an order requiring the defendants to appear and show cause why a temporary injunction should not issue in accordance with the allegations of the complaint, pending a trial on the merits of the request for permanent injunction (R. 7). Local 465 and George Lancaster answered the complaint, alleging, *inter alia*, that the purchasing corporations and the service corporation constituted a single business enterprise, that this enterprise was engaged in an industry "affecting commerce" within the meaning of the federal Labor Management Relations Act, 29 U.S.C. Secs. 141-187, that the activities of Local 465 in striking and picketing were protected activities within the meaning of said Act, and that the Superior Court of King County had no jurisdiction over plaintiffs' action (R. 7-13).

On October 1, 7, 8 and 9, 1958, Local 465 and George Lancaster appeared before the Honorable Lloyd Shorett, one of the judges of the Superior Court for King County, to show cause why a temporary injunction should not issue (R. 70-240). The parties then stipulated that the hearing pursuant to the order to show cause was to be treated as a trial on the merits of the

service corporation's request for a permanent injunction (R. 87).

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America did not appear and the service corporation offered no proof that service of process had been had upon it (R. 70-240).

At the conclusion of the trial, the court orally ruled that the 118 purchasing corporations and the service corporation functioned as one business operation or enterprise; that the activities of this enterprise affected interstate commerce; and that the National Labor Relations Board, and not the Superior Court for King County, had jurisdiction to determine the lawfulness, or unlawfulness, of Local 465's conduct in striking and picketing (R. 40-43).

4. Proceedings in the Supreme Court of Washington

Immediately upon the trial court's ruling that it had no jurisdiction over its cause of action, the service corporation filed, in the Supreme Court of Washington, an *ex parte* application for an alternative writ of mandate requiring the Superior Court for King County to assume jurisdiction of its application for an injunction, together with an affidavit in support thereof (R. 27-43). The court below granted the application and ordered the trial court to appear and show cause on November 13, 1958, why it should not take and assume jurisdiction over the service corporation's cause of action (R. 43-45).

The respondent trial court then filed a return and

answer to the application for alternative writ of mandate (R. 45-60).

On November 13, 1958, the cause was heard by the court below, sitting *en banc*.

On January 8, 1959, the court below filed an opinion in which it held that the trial court was in error in holding that the jurisdiction of the case rested with the National Labor Relations Board. The court ruled that the activities of the purchasing corporations and the service corporation, considered as a single enterprise, do not fall within the scope of the National Labor Relations Act and are not subject to the jurisdiction of the National Labor Relations Board (R. 60-67).[2]

The court acknowledged that the Seattle Yellow Cab enterprise did an annual gross business of $1,429,914.02, and that the National Labor Relations Board has announced that it will take jurisdiction over any taxicab business doing an annual gross business of $500,000, but, said the court, "the test is not the amount of gross volume of business, but whether the local transportation service is an integral part of interstate commerce" (R. 63).

Relying on *U.S. v. Yellow Cab Company*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, and upon *Mateo v. Auto*

[2]In the first paragraph of its opinion, the court states that the case involves an action against "The International Brotherhood of Teamsters." As noted previously, the International Brotherhood of Teamsters did not appear at the trial and there was no showing that service had been made upon it. The only defendants in the case were Taxicab Drivers and Chauffeurs Local Union No. 465 and George Lancaster, its secretary-treasurer.

Rental Company (9th Cir. 1957) 240 F.2d 831, a case arising under the Fair Labor Standards Act, the court held that the activities of a local taxicab company, even though it delivers passengers to and from the terminals of railroad stations and airlines, do not constitute "an integral part of interstate commerce." The court also cited the *Checker Cab Company* decision of the National Labor Relations Board, 110 NLRB 663 (1954), wherein the Board declined to assert jurisdiction over a local taxicab company (R. 64-66).

The court also stated that the activities of the union in striking and picketing the Seattle Yellow Cab system could not be said to be "burdening or obstructing commerce" as there was no testimony in the record to the effect that the strike impaired taxicab service to or from the railroad terminals, airports and docks (R. 66).

The court indicated that perhaps the operation in which Yellow cabs carry through-passengers from the railroads to the steamship dock would constitute "interstate commerce" but noted that the revenue received from this operation was only one-tenth of one per cent of the annual gross revenue (R. 67). The court then concluded:

> ". . . we do not believe that Seattle's Yellow cab system constitutes such an integral step in the interstate movement of passenger traffic as to be considered as being in interstate commerce, nor that any unfair labor practices whether by the union or the Yellow Cab system burden or obstruct interstate commerce. For this reason the Superior

Court was in error in holding that jurisdiction of this case lies with the National Labor Relations Board." (R. 67)

On February 10, 1959, the Supreme Court of Washington entered its judgment in the matter, which judgment decrees that the requested writ of mandate is granted directing the Superior Court of King County to take jurisdiction of the service corporation's action for injunctive relief (R. 68-69). By order of the Chief Justice of the Supreme Court of Washington, the judgment has been stayed, pending action by this court (R. 69-70).[3]

SUMMARY OF ARGUMENT

Petitioner Local 465 properly challenged the jurisdiction of the state court in this matter, on the ground that the Seattle Yellow Cab system is engaged in an industry affecting commerce, and that, accordingly, the sole and exclusive forum for determining the legality of Local 465's peaceful strike and picketing activities against the taxicab system, is the National Labor Relations Board. *Weber v. Anheuser Busch*, 348 U.S. 468 99 L.ed. 546 (1955), and numerous other decisions of this court.

The trial court sustained Local 465's challenge to the jurisdiction of the court, but the court below reversed. In the opinion of the court below, the federal pre-emption doctrine does not apply because the Seattle Yellow Cab system is not sufficiently involved "in interstate

[3] As of the date of preparation of this brief, the strike and picketing still continue.

commerce" to be subject to the National Labor Relations Board.

By the terms of the National Labor Relations Act, the Board is given jurisdiction not only of industries engaged *in* interstate commerce, but, more broadly, over all industries which *affect* commerce. In a proper case, the Board's jurisdiction may even extend to a company whose activities are wholly *intra*state. *NLRB v. Fainblatt*, 306 U.S. 601, 83 L.ed. 1014 (1939).

There is no question but that the Board would assume jurisdiction over the Seattle Yellow Cab system if its processes were invoked. The Board is now asserting jurisdiction over local taxicab companies, like this system, which do an annual business of more than $500,000. NLRB Press Release R-576, Oct. 2, 1958; *Cab Services, Inc.*, 123 NLRB No. 19 (1959). The court below should have deferred to this announced jurisdictional policy, without further inquiry. If the Board's jurisdictional practices are to be questioned, this should be done in litigation before the Board. *Newport News Shipbuilding Company v. Schauffler*, 303 U.S. 54, 82 L.ed. 646 (1938).

Further, the evidence shows that the activities of the Seattle Yellow Cab system clearly affect interstate commerce. The system holds agreements with interstate railroads by the terms of which it transfers through-passengers from the railroad terminals to the steamship docks, and vice versa. These activities are part of interstate commerce. *Chicago v. Atchison, Topeka and Santa Fe*, 357 U.S. 77, 2 L.ed. 1174 (1958). A labor dis-

pute involving Yellow cabs could directly "obstruct" this commerce. Similarly, the system holds franchises with the railroad, airline and steamship terminals by which it is granted the exclusive right to service incoming passengers at those terminals. These activities constitute a necessary "link" in the operations of the carriers who use these terminals. *Red Cab, Inc.*, 92 NLRB 175 (1950). Even if these activities do not constitute a part of interstate commerce, they do facilitate the travel of interstate passengers. A labor dispute involving the system could easily diminish these services and thus obstruct or burden the free flow of interstate travel. *New York State Labor Relations Board v. Wags Transportation System, Inc.*, 130 N.Y.S.2d 731, aff'd 284 App. Div. 883, 134 N.Y.S.2d 603 (1954).

Lastly, this large taxicab system undoubtedly makes substantial direct or indirect out-of-state purchases of taxicabs, parts, gasoline, etc., so that it could be said that a labor dispute might interfere with or obstruct the free flow of such articles in interstate commerce.

The court below was influenced by the fact that there was no evidence that the strike and picketing have actually burdened or obstructed commerce. It is clear, however, that the jurisdiction of the National Labor Relations Board is not dependent upon a showing that there has been an actual impairment of commerce. *NLRB v. Bradford Dyeing Association*, 310 U.S. 318, 84 L.ed. 1226 (1940).

The cases relied upon by the court below, *United*

States v. Yellow Cab Co., 332 U.S. 218, 91 L.ed. 2010 (1957), a case arising under the Sherman Anti-Trust Act, and *Mateo v. Auto Rental Co.*, 240 F.2d 831 (9th Cir. 1957), a case arising under the Fair Labor Standards Act, are inapposite here for they involve statutes which are not similar in scope to the National Labor Relations Act.

ARGUMENT

I. The National Labor Relations Board Has Exclusive Jurisdiction to Determine the Lawfulness, or Unlawfulness, of Peaceful Strikes and Picketing in All Industries Affecting Commerce

Petitioners' challenge to the jurisdiction of the state court was based upon the proposition that the dispute involved was one which, by the terms of the National Labor Relations Act, was subject to the exclusive jurisdiction of the National Labor Relations Board.

It is firmly established, through repeated decisions of this Court, that where a union is peacefully striking and picketing an employer that is engaged in an industry affecting commerce, the sole and exclusive standard for determining the lawfulness or unlawfulness of the union's conduct is the National Labor Relations Act and the sole and exclusive agency for applying that standard is the National Labor Relations Board. The Board may determine that the strike and picketing are not unlawful, or that they constitute protected activities within the meaning of Sections 7 and 13 of the Act, in which cases the union would remain free to pursue such activities, or the Board may determine that the

strike and picketing are unfair labor practices under Section 8 of the Act, in which case the Board would proceed to order the union to cease and desist from such activities and perhaps obtain a federal court injunction to preserve the status quo pending the Board proceedings. In any event the regulation of such activities is exclusively for the Board. All other processes and remedies, including those of state courts, are preempted. Among numerous decisions are:

Amalgamated Association v. Wisconsin Employment Relations Board, 340 U.S. 383, 95 L.ed. 364 (1951);

Garner v. Teamsters, Chauffeurs and Helpers, Local Union No. 776, 346 U.S. 485, 98 L.ed 228 (1953);

Weber v. Anheuser Busch, 348 U.S. 468, 99 L.ed. 546 (1955);

United Mine Workers of America v. Arkansas Oak Flooring Co., 351 U.S. 62, 100 L.ed. 941 (1956);

Amalgamated Meat Cutters Local 427 v. Fairlawn Meats, 353 U.S. 20, 1 L.ed. 2d 613 (1957);

San Diego Building Trades Council v. Garmon, 353 U.S. 26, 1 L.ed.2d 618 (1957) and ..... U.S. ....., 3 L.ed.2d 2775 (1959);

Hotel Employees Union Local No. 255 v. Sax Enterprises, ... U.S. ....., 3 L.ed.2d 289 (1959) (*per curiam*).

As this Court noted in the *Weber* decision, *supra*, at p. 475, "exclusive primary jurisdiction to pass on (a)

union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board."

At the conclusion of the trial the trial court upheld petitioners' challenge to the court's jurisdiction, ruling that the Seattle Yellow Cab system was engaged in an industry affecting commerce, and that the service corporation's exclusive remedy, if any, was with the National Labor Relations Board (R. 40-43). During the trial, the service corporation argued that the Seattle Yellow Cab enterprise was composed of 119 corporations and that the operations of each corporation, considered separately, would not affect commerce, except perhaps on a *de minimis* basis. The trial court rejected this argument and ruled that the various corporations conducted an integrated taxicab business and that, considered as one entity, the activities of this business affected commerce (R. 41-42).[4]

The court below disagreed with the trial court and held that the doctrine of federal pre-emption did not apply. Even if the Seattle Yellow Cab system is considered as a single enterprise, said the court below, its activities do not sufficiently involve interstate com-

[4] The court's ruling is supported by numerous decisions of the National Labor Relations Board to the effect that where separate companies conduct an integrated business, or where they participate together in collective bargaining, these companies can be considered as a single employer for jurisdictional purposes. See *Cab Services Inc.*, 123 NLRB No. 19 (1959), Appendix, *infra*, pp. 39-55 (a recent decision where the Board considered a taxicab enterprise, like the one in the instant case, as a single employer); also *Edward Taubman, et al.*, 77 NLRB 846 (1948); *Bunker Hill Mining Co., et al.*, 89 NLRB 243 (1950); *Steinway Drug Co.*, 102 NLRB 1630 (1953); *Inter-Ocean Steamship Co.*, 107 NLRB 330 (1953); *Orkin Exterminating Co.*, 115 NLRB 622 (1956); *Blue Rock Quarry*, 116 NLRB 1778 (1956); *Allen's Inc.*, 120 NLRB 1021 (1958).

merce so as to bring the system, and its labor disputes, within the jurisdiction of the National Labor Relations Board (R. 60-67).

For the reasons stated hereafter, petitioners respectfully submit that the court below erred in holding that the Seattle Yellow Cab system is not subject to the jurisdiction of the National Labor Relations Board.

II. The Seattle Yellow Cab System Is Engaged in an Industry Affecting Commerce and Is Subject to the Jurisdiction of the National Labor Relations Board

A. The National Labor Relations Board Is Currently Asserting Its Jurisdiction Over Taxicab Companies

In adopting the National Labor Relations Act, Congress exercised the full extent of its authority under the Commerce Clause of the Constitution. The Act was designed to regulate labor relations, not only in industries engaged *in* interstate commerce, but, more broadly, in all industries which *affect* commerce.

> "Since it was first enacted in 1935, the National Labor Relations Act has empowered the National Labor Relations Board 'to prevent any person from engaging in any unfair labor practice . . . (defined by the Act) affecting commerce.' By this language and by the definition of 'affecting commerce' elsewhere in the Act, Congress meant to reach the full extent of its power under the Commerce Clause." *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 3-4, 1 L.ed.2d 601 (1957).

The term "affecting commerce" is defined in Section 2(7) of the Act as follows:

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Thus, the National Labor Relations Board has been given broad jurisdiction, extending even to companies and industries whose activities are wholly *intra*state. *NLRB v. Fainblatt*, 306 U.S. 601, 604-605, 83 L.ed. 1014 (1939). Indeed, the Board's jurisdiction is so extensive that the Board has never been able to fully exercise it. Because of budgetary and staff limitations the Board has had to limit its activities by adopting what it terms "jurisdictional standards." The Board will decline to exercise its authority over labor disputes involving companies which do not meet these self-imposed "jurisdictional standards," even though the activities of these companies may otherwise "affect commerce." See *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 3-4, 1 L.ed.2d 603 (1957); *NLRB v. Denver Building and Construction Trades Council, et al.*, 341 U.S. 675, 684, 95 L.ed. 1284 (1951).

There is no doubt, however, that under the Board's current jurisdictional standards, the Board would assume jurisdiction over the instant dispute involving the Seattle Yellow Cab system. On October 2, 1958, the Board announced, through a press release, that its then existing jurisdictional standards would be broadened. With specific reference to taxicab companies, the Board announced that it would take jurisdiction over any such company which does an annual gross business

of $500,000 or more. (NLRB Press Release, No. R-576, October 2, 1958).[5]

Pursuant to this announcement, the Board is now asserting jurisdiction over local taxicab companies doing an annual gross business of $500,000 or more. The first reported case is *Cab Services, Inc.*, 123 NLRB No. 19 (March 12, 1959).[6] This case, like the instant case, involved numerous taxicab owners and a service corporation who, together, operated an integrated taxicab system.

The Seattle Yellow Cab system would easily meet the Board's jurisdictional standard for taxicab companies for it does an annual gross business of some $1,429,914.02 (R. 108; Def. Ex. 24).

The court below acknowledged the likelihood that the Board would take jurisdiction over the Seattle Yellow Cab system, in accordance with its current standard, but it did not think such an assertion of jurisdiction would be lawful. Said the court below, "the ultimate test is not the amount of gross volume of business, but whether the local transportation service is an integral part of interstate commerce" (R. 63).

Petitioners submit that the court below erred in rejecting as irrelevant the Board's present jurisdictional standard for taxicab companies. The Board's current practice of assuming jurisdiction over any taxi-

[5] For the convenience of the Court, the pertinent portions of this press release are printed in the Appendix, *infra*, pp. 47-48.

[6] For the convenience of the Court, the Board's decision in this case, which is not yet printed in a bound volume of Board decisions, is printed in the Appendix, *infra*, pp. 49-55.

cab company doing an annual business of $500,000 or more, is based upon the proposition, supported by common knowledge, that the activities of such a taxicab company necessarily "affect commerce." Even if it had no other relationship to the channels of interstate commerce, a local taxicab company doing a half-million dollar yearly business would undoubtedly make substantial direct or indirect out-of-state purchases of taxicabs, parts, gasoline, etc., and a labor dispute involving such a company could interfere with the free flow of those articles in interstate commerce. Against a background of 24 years of experience in administering the Act, it would not be unreasonable for the Board to base its jurisdictional standard for taxicab companies on such a proposition.

We note that Congress has now "frozen" the jurisdictional standards of the Board as they existed on August 1, 1959. Section 701 of the Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, 86th Congress, 1st Sess., amends Section 14 of the National Labor Relations Act so as to provide that "the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." Under this statute the Board must continue to exercise jurisdiction over all taxicab companies which do an annual business of more than $500,000. Congress has clearly indicated, by adopting such a statute, that it agrees with the Board that taxicab companies of this size are obviously engaged in an industry "affecting commerce."

This Court has often held, in cases involving the doctrine of federal pre-emption, that the state courts should decline jurisdiction over labor disputes where the facts "reasonably" bring the controversy within the jurisdiction of the Board. See *Weber v. Anheuser Busch*, 348 U.S. 468, 99 L.ed. 546 (1955). Certainly, in view of the Board's express announcement that it would take jurisdiction of any taxicab company doing an annual business of $500,000 or more, it "reasonably appears" that the Board would take jurisdiction over the Seattle Yellow Cab system. Petitioners submit, therefore, the court below should have deferred to the announced jurisdictional policy of the Board, without further inquiry. If the Board's jurisdictional standards are to be challenged, this should be done in litigation before the Board, and not in state court proceedings in which the Board is not a party.[7] Compare *Newport News Shipbuilding Company v. Schauffler*, 303 U.S. 54, 57-58, 82 L.ed. 646 (1938); *Meyers v. Bethlehem Ship Building Corp.*, 303 U.S. 41, 50-51, 82 L.ed. 638 (1938).

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[7] In the new Labor Act, Congress has abolished the "no-man's land" illustrated by *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L.ed. 2d 601 (1957) and states are now permitted to take jurisdiction over certain cases which the Board declines to handle, even though they may involve industries affecting commerce. It is relevant that the test adopted by Congress is whether or not the Board would take jurisdiction under its jurisdictional standards. That is, if a case involves an employer falling within the Board's announced jurisdictional standards, state action is foreclosed. If, however, the employer's business falls outside the Board's announced jurisdictional standards, then state action is permitted. In either event, the determination of the jurisdictional standards is for the Board, pursuant to Board proceedings. See Section 701, Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, 86th Congress, 1st Sess.

B. The Activities of the Seattle Yellow Cab System Clearly "Affect Commerce" so as to be Subject to the Jurisdiction of the National Labor Relations Board

However, even if we ignore the present position of the Board with respect to taxicab companies (as did the court below), it is clear that the Seattle Yellow Cab system falls within the scope of the National Labor Relations Act, and is properly subject to the jurisdiction of the Board. The court below stated the issue to be whether the Seattle Yellow Cab system is an "integral part of interstate commerce" (R. 63). As noted previously, whether a company is engaged *in* commerce is not the test of the Board's jurisdiction, **but, rather, whether a company is engaged in activities which "affect commerce."** Stated properly, the inquiry should be whether the activities of the Seattle Yellow Cab system "affect commerce," that is, whether a labor dispute involving this taxicab system could burden or obstruct commerce or the free flow of commerce.

A labor dispute involving the Seattle Yellow Cab system could logically burden or obstruct commerce, or the free flow of commerce, in any or all of the following ways:

First, the service corporation holds agreements with the railroads operating out of the King Street Station and the Union Station, Seattle, by the terms of which Yellow taxicabs are exclusively utilized by these railroads to transfer through-passengers and baggage between the stations and the Canadian Pacific Steamship Dock, and vice-versa. Railroad passengers traveling on through-tickets (i.e., tickets entitling them

to railroad and steamship passage) are given "transfer coupons" to be used for the trip by taxicab from the railroad station to the steamship dock. These "coupons" are surrendered to the taxicab drivers and, in turn, they are sent by the Seattle Yellow Cab system to the railroads for reimbursement. During the year from July 1, 1957, through June 30, 1958, the railroads paid the Yellow Cab system the sum of $1,436.00 for its transfer services (R. 80-82, 84-87, 109-110; Def. Ex. 4, 24). In transferring passengers from the railroad stations to the steamship docks, and vice-versa, pursuant to agreements with the railroads, the taxicabs operated by the Seattle Yellow Cab system are actually engaged in interstate commerce. As this Court recently noted, such services are "an integral part of interstate railroad transportation." *Chicago v. Atchinson, Topeka and Sante Fe*, 357 U.S. 77, 89, 2 L.ed.2d 1174 (1958). See also *United States v. Yellow Cab Co.*, 332 U.S. 218, 228-229, 91 L.ed. 2010 (1947). A labor dispute or strike involving Yellow taxicabs might interrupt or curtail these transfer services and, thus, directly "obstruct" interstate commerce.

The court below acknowledged that these transfer services could be considered as interstate commerce, but it discounted these activities as being *de minimis* in nature (R. 67). *De minimis*, however, is regarded in law as meaning "trifles — matters of a few dollars or less." *NLRB v. Suburban Lumber Co.*, 121 F.2d 829, 832 (3rd Cir. 1941), cert. denied, 314 U.S. 693. The railroad transfer services performed by Yellow taxicabs cannot be dismissed as *de minimis*.

Secondly, the service corporation owns franchise or concession agreements by which Yellow taxicabs are given exclusive rights to pick up passengers at the following railroad, airline and steamship terminals in Seattle; which terminals service interstate carriers of passengers and baggage: King Street Railroad Station; the Union Railroad Station; the King County Airport (also known as Boeing Field); the Seattle-Tacoma International Airport (also known as Bow Lake Field), and the Canadian Pacific Steamship Dock. Yellow taxicabs also deliver passengers to these terminals, although such services are not pursuant to exclusive franchises or concessions (R. 12, 25, 80-84; Def. Ex. 5, 19).[8]

No figures are available showing the amount of revenue earned by the Seattle Yellow Cab system from taking passengers to and from the railroad stations and the steamship dock (R. 112). However, during the year from July 1, 1957, through June 30, 1958, the system earned gross revenue of $156,062.40 from picking up passengers at the King County and Seattle-Tacoma International airports, pursuant to the franchise or

[8] Copies of the franchise agreements between the service corporation and the airports and the steamship dock were not available (R. 81-83). However, a copy of the franchise agreement involving the Great Northern and Northern Pacific railroads, joint operators of the King Street Railroad Station, was put in evidence (Def. Ex. 5). This agreement provides, in part, that the railroads desire to have sufficient taxicabs on hand in order to care for their incoming passengers; that to provide such service, the taxicab company is granted exclusive right to pick up incoming passengers, and a parking space for this purpose is provided adjacent to the station; that the taxicab company agrees to keep a sufficient number of taxicabs on hand to service incoming passengers; and that the superintendent of the station shall have supervisory authority over the taxicabs, including the authority to have the taxicab company remove any driver considered by him to be unsatisfactory.

concession agreements. During this same period an additional gross revenue of $46,818.00 was earned from delivering passengers to these airports (R. 110-112; Def. Ex. 24).

Petitioners contend that in servicing the incoming passengers at the railroad stations, airports, and steamship docks, pursuant to these franchise or concession agreements, the Seattle Yellow Taxicab system is acting as an essential "link" in the operations of the interstate railroads, airlines and steamships using those terminals. Any interruption in these services, because of a strike or labor dispute, would directly "obstruct" interstate commerce.

This is the theory upon which the National Labor Relations Board asserted jurisdiction over taxicab companies during the period 1950-1954.[9] For example, in *Red Cab, Inc.*, 92 NLRB 175 (1950), a local taxicab company in Indianapolis, Indiana, had franchise agreements with railroad, bus and airline terminals, used by interstate carriers, by which it was granted ex-

[9] The Board has had a wavering policy with respect to whether it should *assert* jurisdiction over local taxicab companies. In 1949, the Board asserted jurisdiction. *Bussard Taxi and Bus Service*, 81 NLRB 1181 (1949). In early 1950, it declined jurisdiction. *Yellow Cab Company of California*, 90 NLRB 1884 (1950) (and other cases). Later in 1950, it asserted jurisdiction. *Red Cab, Inc.*, 92 NLRB 175 (1950) (and other cases). In 1954, it declined jurisdiction, *Checker Cab Company*, 110 NLRB 683 (1954) (and other cases). In 1958, and currently, it is asserting jurisdiction. NLRB Press Release No. R-576, October 2, 1958. *Cab Services, Inc.*, 123 NLRB No. 19 (1959). However, in those cases in which it declined to *assert* jurisdiction, the Board was careful to point out that it possessed the basic jurisdiction to deal with local taxicab companies, but that, for policy reasons, it deemed it advisable not to exercise such jurisdiction.

clusive rights to pick up passengers at these terminals. The Board asserted jurisdiction, holding:

> "... a portion of the employers' business involves providing transportation services from four established terminals, concededly handling interstate traffic, under arrangements which give the employer certain special and exclusive privileges regarding such services. In these circumstances, we are persuaded that the employers' operation may properly be regarded as an essential link in the services performed by these instrumentalities of commerce, and believe that the reasons which motivated our decision to assert jurisdiction over such instrumentalities are easily applicable here."

See also:

Skyview Transportation Company, 90 NLRB 1664 (1951);

Rite Rate Cab Co., 95 NLRB 1302 (1951);

Charman Service Corporation, 99 NLRB 534 (1952);

Red Cab Company, 98 NLRB 932 (1952), enf'd. *NLRB v. Cushman Auto Company* (1st Cir. 1952) 200 F.2d 412.

We also note that in *Garner v. Teamsters Local Union No. 776*, 346 U.S. 485, 98 L.ed. 228 (1953) this Court considered a local trucking company to be subject to the jurisdiction of the Board because, in hauling freight to and from a railroad terminal, its operations formed a necessary "link" in the operations of the railroad. 346 U.S. 485, 486. If the hauling of freight for a railroad makes a trucking company a "link" in the interstate operations of the railroad, it seems to us

that, similarly, the hauling of passengers for a railroad makes a taxicab company a "link" in its interstate operations.

However, even if the servicing of incoming passengers at the terminals is not sufficient to constitute the Seattle Yellow Cab system as a "link" in the interstate operations of the carriers using those terminals, it cannot be disputed that an interruption of these services would inconvenience numerous interstate passengers and interfere with their travel. In this respect, a labor dispute involving the Seattle Yellow Cab system could easily "burden" the free flow of commerce. A leading decision here is *New York State Labor Relations Board v. Wags Transportation System, Inc.*, 130 N.Y.S.2d 731, aff'd 284 App. Div. 883, 134 N.Y.S.2d 603 (1954). In this case the New York State Labor Relations Board brought an action seeking to enforce an order issued by it against the Wags Transportation System, Inc., a New York City taxicab company. The company defended on the ground that the controversy was subject to the exclusive jurisdiction of the National Labor Relations Board. The evidence showed that the company owned and operated 57 taxicabs and that it was part of an over-all system of 29 taxicab companies known as the Terminal System, Inc. Terminal did not operate any taxicabs but it possessed agreements with the New York Central Railroad, New Haven Railroad, Pennsylvania Railroad, and other railroads by which its member companies were given the exclusive right to maintain their taxicabs at these terminals for the purpose of servicing incoming passengers. More

than 15% of the trips made by Terminal System taxicabs were made from these terminals.

The court held that, under National Labor Relations Board decisions, it was proper to consider all of the companies making up the terminal system as a single unit or single employer to determine the existence of the Board's jurisdiction. The court also held that *the* operations of the Terminal System "affected commerce" and were subject to the exclusive jurisdiction of the National Labor Relations Board:

> "Taxicabs, particularly those which have a franchise to serve railroad and bus terminals, are an adjunct of interstate travel. Their temporary unavailability would constitute a burden upon interstate rail and bus travel . . . Industry or commerce need not be dealt a paralyzing blow before it can be deemed to be burdened by a labor dispute affecting such commerce. As a practical matter, curtailment or elimination of such taxi service would have a substantial effect upon interstate commerce. A labor dispute could very well have a greater impact upon transportation service to interstate passengers than a conspiracy to exclude competition. Wags' operation has a sufficient impact upon interstate commerce to justify the NLRB in asserting jurisdiction over its operation." 130 N.Y.S.2d 731, 740.

Lastly, the record reveals that the Seattle Yellow Cab system operates 120 taxicabs and has an annual gross revenue of some $1,429,914.02 (R. 108; Def. Ex. 224).[11]

[10] This decision was cited approvingly by this Court, in *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L.ed. 601 (1957), at footnote 9.

[11] Although no comparisons appear in the record, petitioners believe they can state without contradiction that this is the largest taxicab company in the states of Washington, Oregon, Idaho and Montana.

While no evidence was taken on these matters, it cannot be disputed that the system makes substantial direct and indirect out-of-state purchases of taxicabs, parts, gasoline, etc. A strike involving the system could burden or obstruct commerce by cutting off or diminishing the flow of these articles in interstate commerce.

For the foregoing reasons, petitioners submit that the activities of the Seattle Yellow Cab system clearly "affect commerce" and that a labor dispute involving the system is properly subject to the jurisdiction of the National Labor Relations Board.

C. The Jurisdiction of the National Labor Relations Board is not Dependent Upon a Showing That An Obstruction of Commerce Has Actually Occurred

In holding that the Seattle Yellow Cab system was not subject to the jurisdiction of the National Labor Relations Board, the court below was influenced by the fact that there was no evidence in the record indicating that the strike and picketing of petitioner Local 465 had interfered with the transportation of passengers to and from the railroad, airline and steamship terminals and thus no evidence that commerce was actually burdened or obstructed (R. 66).

It is true that there was little testimony introduced dealing with the effectiveness of the strike and picketing.[12] Such testimony is not necessary in deter-

[12] It is to be noted, however, that the service corporation continually took the position that the strike and picketing was causing irreparable damage to the taxicab business conducted by it and the purchasing corporations. See, for example, the affidavit of A. H. Wenck, president of the service corporation, filed in support of the application for a

mining whether the Seattle Yellow Cab system is subject to the jurisdiction of the National Labor Relations Board. This Court and other courts which have considered this issue have uniformly held that the exercise of jurisdiction by the Board is not dependent upon a showing of an actual stoppage or impairment of commerce:

> "It is not material as the court below thought, that respondent's customers might be able to secure the same services from other Rhode Island processors if the labor dispute should stop the interstate flow of materials to and from respondent's plant. Since the purpose of the act is to protect and foster interstate commerce, the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *NLRB v. Bradford Dyeing Association*, 310 U.S. 318, 326, 84 L.ed. 1226 (1940).

> "The contention made that the particular acts of respondent, upon which the Board based its findings of unfair labor practice, have not been shown to have been a burden upon commerce is without merit. The Board need not prove an actual stoppage in the flow of commerce or even the immediate likelihood of such stoppage before it assumes jurisdiction over the employer." *NLRB v. Phoenix Mutual Life Insurance Co.*, 167 F.2d 983, 985 (7th Cir. 1948), cert. denied, 335 U.S. 845, 93 L.ed. 395 (1948).

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writ of mandate, wherein he asserts that the dispatchers and drivers have not reported for work, that this has caused "substantially reduced operations," that there have been "considerable delays" in rendering services, and that a continuation of the strike and picketing may put the service corporation and the purchasing corporations completely "out of existence, thereby diminishing competition and also injuring the general public" (R. 45-46).

Accord:

NLRB v. Alloy Cast Steel Co., 117 F.2d 302, 303 (6th Cir. 1941);

NLRB v. American Potash and Chemical Corp., 98 F.2d 488, 495 (9th Cir. 1938), cert. denied 306 U.S. 643, 83 L.ed. 1043 (1939).

D. Decisions Arising Under the Sherman Anti-Trust Act and the Fair Labor Standards Act are Inapposite in Determining the Scope of Authority Granted to the National Labor Relations Board by the National Labor Relations Act

The court below found support for its holding in *United States v. Yellow Cab Co.*, 332 U.S. 218, 91 L.ed. 2010 (1947), a case arising under the Sherman Anti-Trust Act, 26 Stat. 209, as amended, 15 U.S.C., Sec. 1 *et seq., and Mateo v. Auto Rental Co.*, 240 F.2d 831 (9th Cir. 1957), a case arising under the Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U.S.C. Sec. 201, *et seq.* The court below relied heavily upon the *Yellow Cab Co.* decision, considering it as "appropriate authority for the position we here take" (R. 65).

Petitioners respectfully submit that both the *Yellow Cab Co.* and *Mateo* cases, *supra*, are inapposite to the issue of whether the activities of the Seattle Yellow Cab system are subject to the National Labor Relations Board. The two federal statutes involved in those cases are not similar in scope to the National Labor Relations Act.

In *United States v. Yellow Cab Company, supra*, the issue for this Court's resolution was whether a com-

plaint stated a cause of action under the Sherman Act, which prohibits contracts or conspiracies "in restraint of trade or commerce among the several states." The complaint alleged, in part, that the defendant had conspired to monopolize the taxicab business in the City of Chicago. This business was asserted to have an interstate character because the taxicabs involved, in the course of their ordinary operations in and around Chicago, took passengers to and from the Chicago railroad stations.[13]

This court held that these allegations were not sufficient to state a cause of action under the Sherman Act for, in this court's view, the transportation of passengers to and from the railroad stations did not constitute "an integral part of interstate commerce." However, the court very carefully pointed out that its decision was based solely upon the facts of the particular case, as applied to the Sherman Act. No other federal act was involved or interpreted. Said the court:

> "We do not mean to establish any absolute rule that local taxicab service to and from railroad stations is completely beyond the reach of federal power or even beyond the scope of the Sherman Act.
>
> * * *
>
> "All that we hold here is that when local taxi-

[13]This court was careful to point out that the taxicab companies involved had "no contractual or other arrangements with the interstate railroads." 332 U.S. 218, 231. This alone would distinguish the *Yellow Cab* case from the instant case. Here, the trips to and from the terminals are made pursuant to franchise or concession agreements which give the taxicab company the exclusive right to service the terminals and which require the company to maintain adequate service at the terminals.

> cabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act." 332 U.S. 218, 232-233.

Thus, this court in the *Yellow Cab* case was not called upon to decide whether certain activities of a taxicab company, in transporting passengers to and from railroad stations in the City of Chicago, might "affect commerce," within the meaning of the National Labor Relations Act. For this reason, petitioners contend that the *Yellow Cab* decision does not support the judgment below.

Petitioners also contend that the judgment of the court below receives no support from *Mateo v. Auto Rental Company, supra*. Here the issue was whether the drivers of vehicles taking passengers to and from the Honolulu airport were "engaged in commerce" within the meaning of the Fair Labor Standards Act. The court did not have before it, nor did it pass upon, the issue of whether the operations of these drivers might "affect commerce." Indeed, the court took pains to point out that such an issue was not involved in the case:

> "Our analysis of the applicable law must of necessity commence with the statutory language (of the Fair Labor Standards Act). We note initially that Congress has not legislated to the constitutional limits of the commerce power, but has instead restricted the purview of the Act to those

> 'engaged in commerce.' It is not enough that the activity affect commerce; the employee must actually be engaged in interstate commerce. We therefore set aside considerations which govern the determination of those cases dealing with the broader 'affect' concept. Neither do we regard as relevant those cases involving the 'production of goods for commerce' provision. Of these three different phrases used in connection with the commerce power, the one with which we are concerned is the narrowest in scope."

Accordingly, the *Mateo* decision is inapposite to the issues in the instant case. It is to be noted, in this connection, that the National Labor Relations Board has refused to consider decisions arising under the Fair Labor Standards Act, in determining the exercise of its own jurisdiction. See *Roane-Anderson Company*, 77 NLRB 953 (1948).

For the foregoing reasons petitioners submit that decisions arising under the Sherman Act and the Fair Labor Standards Act are inapposite to the issue of whether the activities of the Seattle Yellow Cab system, in the instant case, fall within the scope of the National Labor Relations Act and are subject to the National Labor Relations Board.

CONCLUSION

Petitioners submit, for the reasons stated herein, that the court below erred in ruling that the Seattle Yellow Cab system is not subject to the jurisdiction of the National Labor Relations Board.

Wherefore, petitioners respectfully pray that the judgment of the court below be reversed.

Respectfully submitted,

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APPENDIX

1. PRESS RELEASE OF NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD
Washington, D. C.

FOR IMMEDIATE RELEASE (R-576)
THURSDAY, OCTOBER 2, 1958

N.L.R.B. ANNOUNCES CHANGES IN EXERCISE OF JURISDICTION

The National Labor Relations Board today announced changes in its standards for determining in which cases the Board will exercise its jurisdiction. The current standards were adopted in July, 1954.

The new standards take immediate effect, applying both to all cases now pending before the Agency and to all cases which may be filed.

The various elements of the new standards will be set forth in decisions rendered by the Board following October 2, 1958.

The Board's action was taken pursuant to its statement of July 22, 1958, wherein the Board: (1) announced certain proposed changes in its standards; and (2) invited briefs or comments by any interested groups, organizations and persons. At that time the Board said:

> "We are taking this action as a consequence of the situation to which the Supreme Court referred in the case of *Guss v. Utah Labor Relations Board*.

Therein the Supreme Court adverted to 'a vast no-man's land, subject to regulation by no agency or court,' and declared: (1) 'Congress is free to change the situation'; and (2) 'The National Labor Relations Board can greatly reduce the area of no-man's land by reasserting its jurisdiction.'

"On Friday (July 18), the Congress voted approval of the Board's appropriation for the fiscal year 1958-1959. The total was $13,100,000, of which $1,500,000 took into allowance the extension of the Board's jurisdiction into some of the area covered by the so-called no-man's land.

"Today, we are announcing this action, so that more individuals, labor organizations and employers may invoke the rights and protections afforded by the statute."

Following are the new standards which revise somewhat the proposals set forth in the July announcement:

* * *

4. *Instrumentalities links and channels of Interstate Commerce:* $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.

* * *

6. *Transit systems:* $250,000 gross volume.[2]

[2] Except taxicabs, as to which the retail ($500,000 gross volume of business) test shall apply.

* * *

2. DECISION OF THE NATIONAL LABOR RELATIONS BOARD IN THE *CAB SERVICES, INC.*, CASE 123 NLRB No. 19

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAB SERVICES, INC., d/b/a RED AND WHITE CAB COMPANY,[1] *Employer*, and CHAUFFEURS AND ASSOCIATED WORKERS UNION, *Petitioner*.	Case No. 18-RC-3779 Issued Mar. 9, 1959

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Clarence A. Meter, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in the taxicab business in Minneapolis, Minnesota, operating about 48 cabs, 38 of which are owned by the individual owner-drivers who are the shareholders in Cab Services; the remain-

[1] Cab Services, Inc., is a Minnesota corporation, all of whose shareholders are cab owners who are also associated together in an unincorporated group known as Red and White Airway Taxicab Association. All parties agree that the operations of the corporation and the association are closely integrated, and that they constitute a single Employer.

ing cabs are owned by the corporation itself or by the Red and White Airway Taxicab Association. The Employer's annual gross volumes of business is in excess of $700,000. The gas an oil used in the Employer's operations, to the value of $60,000 per year, is purchased from sources which obtain it from outside Minnesota. The Intervenor contends that the Board should not assert jurisdiction here, because the contract between the Intervenor and the Employer, which the former urges as a bar, was entered into on the assumption that the rules of interpretation of the Minnesota Department of Labor would be applicable. In view of the Board's decision to apply its revised jurisdictional standards to all pending cases,[2] and as the Employer's volume of business exceeds the $500,000 minimum prescribed for retail enterprises, including taxicab companies, we find that it will effectuate the policies of the Act to assert jurisdiction herein.[3]

2. The labor organizations involved claim to represent certain employees of the Employer.[4]

3. The Intervenor contends that a current contract between it and the Employer is a bar to this petition. The contract, effective from February 15, 1958, to February 15, 1960, is a supplement to an existing "master agreement" between the parties. The Petitioner asserts that the contract is not a bar because the master agree-

[2] *Siemons Mailing Service*, 122 NLRB No. 13.

[3] *Carolina Supplies and Cement Co.*, 122 NLRB No. 17, fn. 5.

[4] Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and Helpers Union, Local 958, I.B.T.C.W. & H. of A., referred to herein as the Intervenor, was permitted to intervene on the basis of its contractual relationship with the Employer.

ment contains an invalid union-security clause. The provision in question is contained in Section 1, paragraph A, of the master agreement, and reads as follows:

> "A. The Union shall be the sole representative of all employees covered by this agreement in collective bargaining with the Employer. There shall be no discrimination against any employee because of Union affiliation. The Employer agrees that after a Forty (40) day qualifying period, all new employees shall become members of the Union. In the event that the Union notifies the Employer that any of the drivers are not members in good standing with the Union, it shall be the duty of the Employer to discharge any such driver."

The contract fails to grant the requisite 30-day grace period during which non-member incumbent employees need not join the Intervenor. It thereby fails to conform to Section 8(a)(3) of the Act, and may not, therefore, serve as a bar to this petition.[5] We do not, in these circumstances, pass on other grounds urged by the Petitioner for finding the contract not a bar.

4. The parties agree that all taxicab drivers, servicemen, dispatchers and order takers employed by the Company constitute an appropriate unit. The Petitioner and Intervenor would also include, while the Employer would exclude, the owner-drivers.

Red and White Airway Taxicab Association is an organization comprised of 31 taxicab drivers, each of whom owns at least one cab. The Association itself owns 8 cabs. Each member of the Association owns a share of

[5] *Keystone Coat, Apron & Towel Supply Company*, 121 NLRB No. 125.

stock in Cab Services, Inc., a corporation which owns a building and land on which are located a gasoline station, quarters for drivers, business offices and a dispatching room. Cab Services provides its shareholders with bookkeeping, dispatching and managerial services, legal counsel, representation in labor matters, and facilities for purchasing oil and gasoline. Cab Services also owns 2 cabs. It employs regular, extra, and part-time, or extra-extra, drivers for those shifts when the owner-drivers are not driving, and for all shifts on the cabs owned by itself and the Association. Owners may work longer shifts than other drivers and are not required to work as regularly. They drive only their own cabs. Extra and part-time drivers may be assigned by the Employer to drive any cab available on their shift. The owners keep the receipts earned from their driving, and share the receipts of other drivers of their cabs on a pre-determined basis. The owners pay a fixed weekly amount for the general services rendered by Cab Services. The latter withholds from the receipts due them any amounts necessary to pay social security and income taxes and workmen's compensation and prepares their tax returns on an individual owner basis. Although the owners have been members of the Intervenor, they have not been included in the coverage of the contract between the Intervenor and the Employer.

At yearly shareholder meetings, a board of directors is selected from among the owner-drivers to direct the corporation's affairs and supervise the paid manager who conducts the Employer's routine business. The manager is usually an owner-driver but one who does

no driving while serving in that capacity. The manager hires, fires, and disciplines all drivers other than the owners. The latters' breaches of discipline are referred to the board for decision. Only the shareholders may force an owner to leave the association. The shareholders also reserve to themselves the right to decide disputes between the manager and the board of directors.

Although stock ownership does not alone preclude the inclusion of employee stockholders in a collective bargaining unit with other employees,[6] the Board has excluded them when their stockholding interest gives them an effective voice in the formulation and determination of corporate policy.[7] In the instant case, the owner-drivers are the sole members and stockholders of the Employer, and have an effective voice in determining policy through their selection of the directors who are, themselves, required to be owner-drivers. The stockholders also receive preferential treatment because of their status as owner-drivers, in selection of shifts, and through their freedom from the manager's exercise of disciplinary action against the other drivers. This divergence of proprietary and bargaining interest between stockholders and other drivers requires that the former be excluded from a bargaining unit of employees. Under these circumstances, we shall exclude the owner-drivers from the unit hereinafter found appropriate.

Accordingly, we find that the following employees

[6] *Everett Plywood & Door Corporation*, 105 NLRB 17.

[7] *Brookings Plywood Corporation*, 98 NLRB 794, 798; cf. *Coastal Plywood Company*, 102 NLRB 300.

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All taxicab drivers, cab servicemen, dispatchers, and order takers of the Employer at its Minneapolis, Minnesota, establishment, including extra drivers, but excluding owner-drivers, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate as early as possible but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to Section 102.69 and 102.70 of the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Those in the military services of the United States, may vote, if they appear in person at the polls. Ineligible to vote are employees who have, since that period, quit or been discharged for cause and have not been rehired or reinstated before the election date and employees on strike who are not entitled to reinstatement. Those eligible shall vote whether they desire to be represented, for collective bargaining purposes, by Chauffeurs and Associated Workers Union; or by Minneapolis Taxicab Drivers, Livery Chauffeurs, Ambulance Drivers and

Helpers Union, Local 958, I.B.T.C.W. & H. of A.; or by neither.

Dated, Washington, D.C.

PHILIP RAY RODGERS, *Member*

STEPHEN S. BEAN, *Member*

JOHN H. FANNING, *Member*

(SEAL) NATIONAL LABOR RELATIONS BOARD